IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.823 OF 2004

1.Sou.Rukmini Yeshwant Kharade,
Age 65 years, Occ.Housewife.

2.Smt.Lilabai Vithal Patil,
Age 32 years, Occ.Household.

3.Vishwas Yeshwant Kharade,
Age 25 years, Occ.Agriculture.

All residents of Manjarde,
Tal.Tasgaon, Dist.Sangli.

(At present No.3 lodged at Sangli ...Appellants
District Prison, Sangli) Ori.Accd.1, 2 & 3

Versus

The State of Maharashtra, ...Respondent
(At the instance of Sr.P.I.,
Tasgaon Police Station, Dist.Sangli)

.....

Mr.Nitin Pradhan with Ms.S.D.Khot & Mr.Dhananjay Bhosale for Appellants.

Mr.Y.S.Shinde, A.P.P. for Respondent.

.....

CORAM : A.M.KHANWILKAR, J.

DATE OF RESERVING)
THE JUDGMENT) : 16/04/2007.

DATE OF PRONOUNCING)
THE JUDGMENT) : 08/06/2007.

JUDGMENT:

1. This Appeal is directed against the

Judgment and Order passed by the Sessions Judge, Sangli dated 30th June 2004 in Sessions Case No.21 of 2003. The Trial Court found Appellants/Accused Nos.1 to 3 guilty of offence punishable under Section 306 r/w Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'I.P.C.') and Section 498A read with Section 34 of I.P.C. By the same Judgment, the Trial Court, however, acquitted Appellants/Accused Nos.1, 2 and 3 of charge under Section 304B r/w Section 34 and Section 302 r/w with Section 34 of the I.P.C. Additionally, the Trial Court acquitted accused No.4 of all the charges qua him.

2. Briefly stated, Mrs.Seema Vishwas Kharade (hereinafter referred to as 'Seema') was married to accused No.3. Accused No.1 is the mother of accused No.3 (mother-in-law of deceased Seema). Accused No.2 is the widowed sister of accused No.3 (sister-in-law of deceased Seema). Accused No.4 is the father of accused No.3 (father-in-law of deceased Seema). All the accused were living together in the same house in Village Manjarde during the relevant period. The deceased was the daughter of the complainant-Jagannath Tukaram

Patole (PW 2). Seema was married to accused No.3 on 28th May 2000. The marriage was solemnized at Village Arawade as per the agreement arrived at between the two families. Seema, however, died due to hanging on 22nd April 2002 in her matrimonial house. The complaint (Exhibit 21) was recorded in the local police station at the instance of Seema's father (PW 2). He reported that Seema committed suicide on account of continuous ill-treatment meted out to her. After the said complaint was registered, investigation commenced. Initially, the investigation proceeded on the assumption that it was a case of suicide, but later on it was also investigated from the angle of murder by pressing neck of Seema by a small rope. After completion of the investigation, charge-sheet came to be filed against the four accused. As the accused pleaded not guilty, trial proceeded. All the four accused were charged initially with offence punishable under Section 498A r/w Section 34, Section 304B r/w Section 34 and Section 302 r/w Section 34 of the I.P.C. Later on, additional charge for offence punishable under Section 306 r/w Section 34 of the I.P.C. was framed against all the accused. The prosecution examined the complainant Jagannath

T.Patole-father of deceased Seema (PW 2), Pankaj J.Patole-brother of deceased Seema (PW 4) and Housabai J.Patole-mother of deceased Seema (PW 5) to substantiate the case against the accused. The prosecution also examined Dr.Deepak B.Lade (PW 1) to establish the factum of cause of death of Seema. The prosecution also examined Balaso N. Patole (PW 3) who had acted as panch regarding the scene of offence. The prosecution examined Sanjay Popat Chavan (PW 6) who had taken photographs of the dead body after he suspected that it was not a natural death of Seema. Lastly, prosecution examined Madhukar S.More (PW 7) who was the Investigating Officer of the case.

3. After analysing the evidence on record, the Trial Court first noted that the death of Seema was a suicidal death. To record that finding, the Trial Court has analysed the evidence of PW 1, PW 2, PW 6, PW 7, photographs (Exhibit 32), medical certificate (Exhibit 18). So far as the finding of the Trial Court that Seema died a suicidal death is not subject matter of challenge in the present Appeal. In other words, both the sides have accepted that finding. In any case, there is

overwhelming evidence on record to take the view that it was a case of suicidal death.

4. Be that as it may, insofar as the merits is concerned, the Trial Court, on analysing the evidence, in particular, of PW 2, PW 4 and PW 5, found accused Nos.1, 2 and 3 guilty of offence under Section 498A r/w Section 34 and Section 306 r/w Section 34 of the I.P.C. In the present Appeal, the finding so reached by the Trial Court has been assailed. I shall refer to the grounds of attack at the appropriate place. Before examining those aspects, I shall straightaway advert to the evidence of PW 2. PW 2 has spoken about having lodged complaint to the Police Station on 23rd April 2002. The complaint has been brought on record as Exhibit 21. He had reported that his second daughter Seema was married at Manjarde to accused No.3. The proposal for that marriage was mediated by his relative Subhash Limbade. He has mentioned that on 22nd May 2000, list of agreed terms on which marriage was to be performed, was prepared at Manjarde in the presence of Sopan Dnyanu Patole, Baburao Dnyanu Patole and his son (PW 4) as well as 10 to 12 other persons.

Incidentally, the said list has been proved and has been taken on record as Exhibit 22. The complainant (PW 2) has disclosed the agreed terms on which the marriage of his daughter was performed with accused No.3. He has stated before police that he spent Rs.90,000/- (Rupees Ninety Thousand) for solemnising marriage of Seema, which was performed on 28th May 2000. He has asserted that at the time of marriage, there was no complaint about any matter from the bridegroom's side. He has then stated that after marriage, Seema joined accused No.3 at Manjarde and started living happily. However, after four months, when his son (PW 4) had gone to bring back Seema, accused Nos.1 and 2 had told him that when he brings back Seema, he should bring sufficient *Durdi* (basket of sweets) as their relations were too many. It is stated that to avoid any trouble, while sending Seema back to the matrimonial house, all *maan-paan* (customary formalities) was done. He has then mentioned that in the first Diwali when Seema came to her parental house (*Maheri*) along with son-in-law/accused No.3, she was instructed by accused No.1 and accused No.2 not to return without gold ring for accused No.3. Accordingly, half tola ring was given to accused

No.3 to avoid any ill-treatment to Seema. It is then stated that when Seema was pregnant, she visited her paternal house occasionally, when she used to complain that her mother-in-law (accused No.1) and sister-in-law (accused No.2) were ill-treating her. It is next mentioned that when *Dohale Meal* (customary feast to celebrate the occasion of pregnancy of the daughter) was arranged on completion of seven months pregnancy of Seema, the mother-in-law (accused No.1) and sister-in-law (accused No.2) as well as son-in-law (accused No.3) made sarcastic comments in respect of the clothes. It is also noted in the complaint that when Seema came back to her paternal house, she informed the complainant (PW2), her mother (PW 5) and her brother (PW 4) that the accused No.1, accused No.2 and accused No.3 were commenting (ridiculing) her on the food prepared by her and also on account of her physical handicap. It is stated that Seema told that she was also ridiculed for not bringing ornaments during the marriage. It is mentioned in the complaint that as a result, the complainant (PW 2) gave seven tolas of gold ornaments during the ninth month of pregnancy of Seema. It is then stated that when Seema delivered a baby girl, the

accused No.1 and accused No.2 who had come to see Seema, ridiculed Seema by saying 'bari karti zali ahe' (expressing unhappiness for having given birth to a female child). It is then stated that thereafter the husband's parents were demanding Rs.10,000/- (Rupees Ten Thousand) on the pretext that they want to do new garden. That amount of Rs.10,000/- was given to them in August 2001. It is further stated that after five-six months of the marriage, husband's mother and sister started ill-treating Seema. It is then stated that last Thursday before the incident took place, Seema had telephoned on phone No.55835, belonging to neighbour Brahmadeo Yevale, when she informed that accused No.1, accused No.2 and accused No.3 were demanding Rs.40,000/- (Rupees Forty Thousand) to pay the loan. That phone was attended by wife of the complainant - mother of Seema (PW 5), who in turn informed the same to the complainant. It is then stated that on 22nd April 2002 at 4.00 hrs., when the complainant was at Tasgaon, he was informed that his daughter was dead due to hanging. Immediately on receiving such information, the complainant and other family members rushed to the matrimonial house of Seema where she was seen dead,

hanging to a rope. It is stated that the accused 1 to 3, after five to six months from the marriage, started ill-treating and ridiculing Seema because of her physical disability. They (accused) treated Seema as a liability and called upon her to bring money and ornaments from her parents on the pretext that the parents of Seema did not make sufficient expenditure in the marriage. She was also ill-treated for not able to prepare food and having given birth to a baby girl by describing the child as 'karti' (derogatory remark for a girl child). It is noted in the complaint that Seema was continuously ill-treated, causing her physical and mental strain, as a result of which, she committed suicide.

5. In the evidence, PW 2 has more or less re-iterated the same factual matrix with regard to the circumstances which led to forcing Seema to commit suicide. While deposing before the Court, PW 2 has made reference to the comments made by accused No.1 and accused No.2 in the presence of his son (PW 4) when he had gone to fetch Seema after four months of marriage. The said accused had said that when Seema returns back to her

matrimonial house, she should get sufficient quantity of *durdi* (basket of sweets) to be distributed amongst the relatives and family of the accused. This demand was complied. He has then referred to the fact that for celebration of first Diwali as per the custom, Seema was brought to her parental house when accused No.3-husband also accompanied her. At that time, Seema disclosed that accused Nos.1 and 2 had warned her to ensure that gold ring is gifted to accused No.3 and if it is not gifted, she should not return to her matrimonial house. He has deposed that even this demand was complied by giving half tola gold ring and clothes to accused No.3 when Seema was sent back to her matrimonial house along with accused No.3. PW 2 has then deposed that when he had brought Seema in her 7th month of pregnancy, so that, she can stay with her parents and family for few days. However, the accused asked them to immediately send back Seema to her matrimonial house. Seema stayed only for fifteen days. During that stay, Seema disclosed that she was being ridiculed for her physical disability which had occurred due to Polio in her right leg. Besides, Seema disclosed that accused were sarcastic about

sufficient gold ornaments were not given to her during the marriage. Seema also disclosed that she was being commented on the pretext that she was not able to do good cooking. He has deposed that to avoid any trouble, he gave seven tolas of gold ornaments to Seema, which belonged to his wife (PW 5), after polishing the same, when he sent back Seema to her matrimonial house. He has then deposed that customary gifts like clothes were given to accused Nos.1 to 4 with lots of sweets when they had gone to attend *Dohale Meal* function. He has stated that although the clothes purchased by him for being gifted to accused Nos.1 to 4 were of good quality, accused No.3 in the presence of relatives and neighbours commented that the clothes purchased for his parents were not of good quality. He has then deposed that when Seema used to visit her parental house, she used to disclose that all the accused persons were ill-treating her and commenting about her physical handicap and also that she was not able to cook good food. He has then deposed that when Seema was brought to her house in the 8th month of pregnancy, Seema disclosed that accused No.1 had told her to bring Rs.10,000/- (Rupees Ten Thousand) from him, as the

family of accused wanted the amount for grapes garden. PW 2 has deposed that thereafter, he personally handed over Rs.10,000/- to accused No.3. PW 2 has then referred to the fact that he and son-in-law of his elder brother had gone to the farm of accused with tractor and also helped the accused persons in preparing the land for grapes garden. He has then deposed about the incident when accused Nos.1, 2 and 3 had gone to see the new born baby when accused Nos.1 and 2 commented Seema for having given birth to a female child. He has then deposed about the telephone call received from Seema, which was attended by his wife (PW 5), on telephone No.55538 of his neighbour Brahmadeo Yewale, on the previous Thursday before the date of incident, when Seema disclosed to PW 5 that her husband (accused No.3) was demanding Rs.40,000/- (Rupees Forty Thousand), as he (accused No.3) was of the view that complainant (PW 2) had earned handsome income in that year from his (PW 2's) grape garden. This episode was disclosed to PW 2 by his wife (PW 5). He has then deposed that on 22nd April 2002, when he had gone along with his wife (PW 5) to Tasgaon for marketing, one Shashikant Baburao Patil informed that Seema was

dead. Thereafter, he and his family members proceeded to the matrimonial house of Seema where she was seen dead due to hanging. This witness has been cross-examined by the defence. The cross-examination is only to cull out that whatever gifts were given were as per the customary practice. The cross-examination was also to bring out omissions in the complaint (Exhibit 21) and improvements of the witnesses in the evidence, not being consistent with the statement-complaint (Exhibit 21). The attempt of the cross-examination is also to bring on record that the accused No.3 was married to Seema with full knowledge that she was physically handicap. Moreover, the bridegroom side had also contributed to the marriage by giving clothes, mangalsutra, painjan (anklet), ear tops and one gold mala (chain) to the bride. That there was no quarrel at all on giving gifts and maan-paan in the marriage. Interestingly, the admission of accused No.3 having demanded clothes and gold ring on the occasion of first Diwali has come in the cross-examination in the form of following question posed to PW 2 :

"Whether accused No.3 had demanded clothes and gold ring on the first Diwali?"

. The thurst of the cross-examination by the defence was to make the witness agree that there was nothing objectionable in demanding customary gifts or taking the help and monies from relatives in agricultural matters. Suggestion is given to this witness that in fact the neighbouring ladies were teasing Seema regarding her physical handicap in one leg and on account of that Seema was unhappy.

6. The evidence of PW 2 is substantiated by the evidence of PW 4 and PW 5. PW 4-brother of Seema has spoken of the fact that after Seema gave birth to a female child, the ill-treatment by the accused persons was intensified. He has stated that accused Nos.1 and 3 were blaming Seema regarding her physical handicap in one leg. He has also spoken about the episode of comments made by the accused to bring sufficient quantity of sweets. He has then spoken about the episode of accused No.1 having told Seema to demand gold ring and clothes for accused No.3 on the occasion of first

Diwali and that such articles were given to accused No.3. He has spoken about the fact that accused No.3 demanded Rs.10,000/- for agricultural operation through Seema after fifteen days from Diwali festival and that his father gave that amount to accused No.3. He has also spoken about the fact that when Seema was brought to her parents house in the 7th month of pregnancy, so that, she can spend some time with her family, but she was immediately taken back to her matrimonial house by the accused. He has then spoken about the episode of comments made by accused No.1 blaming Seema when she had visited hospital to see Seema and newly born female child. He has also spoken about the episode of accused No.1 having commented upon the quality of clothes given to accused No.4 as customary gift. He has spoken about the disclosure made by Seema about ill-treatment meted out to her. He has then deposed about the telephone call received from Seema eight days before the incident which was attended by his mother (PW 5) when Seema disclosed that accused No.3 has demanded Rs.40,000/- (Rupees Forty Thousand). The evidence of PW 4 broadly corroborates the position stated by complainant (PW 2). This witness was also

extensively cross-examined. The attempt of the defence was to elicit admission from this witness that the gifts given to son-in-law were customary gifts. The cross-examination is more or less on the same lines as in the case of PW 2. This witness has, however, stood the cross-examination in relation to the events seen and heard by him personally, amongst others, event as unfolded in the hospital when accused No.1 had commented Seema for having given birth to a female child.

7. The other witness to whom disclosures were made by Seema, has been examined as PW 5 (mother of Seema). She has also stated about the disclosures made by Seema to her regarding the ill-treatment meted out to her. She has mentioned about the episode when Seema was brought to her parents house after four months of marriage when demand of sufficient quantity of sweets was made by accused Nos.1 to 4. She has spoken about the disclosure made by Seema during her stay with them in the first Diwali. Seema had disclosed that accused Nos.1 to 4 had warned her to ensure that gold ring is gifted to accused No.3 otherwise she should not come back to her matrimonial house. She has

deposed that gold ring was gifted to accused No.3 as per the demand. She has then spoken about the episode which had happened during *dohale meals*, when accused Nos.1 to 3 picked up quarrel with PW 4 and commented that the clothes gifted to them were not of good quality. She has then deposed about the demand regarding gold ornaments conveyed through Seema and also of fulfilling that demand. She has also deposed about the episode that accused No.1 had blamed Seema for having delivered a female child. She has also deposed about the demand of Rs.10,000/- (Rupees Ten thousand) which was conveyed through Seema. She has also stated about the disclosure made by Seema that there were quarrels in the house of the accused and accused persons were ill-treating her. She has then mentioned about the telephone call received from Seema eight days prior to the date of incident. She has deposed that Seema had conveyed on telephone about the demand of Rs.40,000/- which was required to pay-off the loan taken by the accused No.3 for grape garden. Even this witness has been cross-examined on the same lines as that of the cross-examination of PW 2 and PW 4.

8. The question is: whether on analysing this evidence, it is possible to take the view that the finding and conclusions recorded by the Trial Court are manifestly wrong and perverse. In my opinion, the conclusion reached by the Trial Court recording finding of guilt against accused Nos.1 to 3/Appellants herein for offence punishable under Section 306 r/w Section 34 as also Section 498A r/w Section 34 of the I.P.C. will have to be upheld being a possible view. Indeed, the Appellants would be right in contending that the evidence of PW 2, PW 4 and PW 5 which asserts about the disclosure made by Seema, such evidence cannot be looked into for the purpose of offence under Section 498A of the I.P.C., being hearsay evidence. That however, does not mean that the same evidence cannot be used against the accused to establish any other offence such as Section 306 r/w Section 34 of the I.P.C. I shall elaborate on this aspect a little later.

9. I shall first deal with the sweep of offence punishable under Section 306 r/w Section 34 of the I.P.C. Section 306 of I.P.C. reads thus:

"**306. Abetment of suicide.-**If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

. Ordinarily, for making out an offence under Section 306 of the I.P.C., the prosecution is required to establish the factum of abetment of a thing by the concerned accused. For that, the prosecution has to establish one amongst the three ingredients envisaged by Section 107 of the I.P.C.

Section 107 reads thus:

"107.Abetment of a thing.-A person abets the doing of a thing, who-

First.- Instigates any person to do that thing; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate

the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend *Z*. *B*, knowing that fact and also that *C* is not *Z*, wilfully represents to *A* that *C* is *Z*, and thereby intentionally causes *A* to apprehend *C*. Here *B* abets by instigation the apprehension of *C*.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

(emphasis supplied)

10. However, in relation to offence of abetment of suicide by a married woman, the law postulates that the Court may presume that suicide has been abetted by the husband or by such relative of the husband, if it is shown that the woman committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband subjected her to cruelty. It will be useful to advert to Section 113A of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Evidence Act'), which reads thus:

"**113A. Presumption as to abetment of**

suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.-For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860)].

(emphasis supplied)

Relevant portion of section 498A of the Indian Penal Code, (45 of 1860), is reproduced below:

Explanation.- For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical); or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

(emphasis supplied)

. On conjoint reading of these provisions, it is amply clear that the Court will have to presume that suicide committed by a married woman had been abetted by her husband or by such relative

of her husband if the suicide is committed in specified situation. For example, suicide committed by a woman within a period of seven years from the date of marriage and that her husband or such relative of her husband had subjected her to cruelty. The expression cruelty has been spelt out in the Explanation to Section 498 A of I.P.C. (See *K.Prema S.Rao v. Yadla Srinivasa Rao - 2003(1) SCC 217* (paras 18 and 19). Also see *Shaikh Rashid Shaikh Khudabux v. State of Maharashtra - 2002 All MR (Cri.) 2392* (paras 14 and 15).

11. Section 113A of the Evidence Act is a provision regarding rule of evidence. The accused in such a case is required to rebut the legal presumption. That will have to be done by producing evidence relating to facts which are especially within his personal knowledge. By virtue of Section 106 of the Evidence Act, burden of proving those facts is upon him. Section 106 reads thus:

> "**106. Burden of proving fact especially within knowledge.-** When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) *A* is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

12. As Section 113A of the Evidence Act requires the prosecution to establish that the husband or relative of the husband had subjected the woman to cruelty, such evidence ordinarily should be direct evidence as is required by Section 60 of the Evidence Act. The same reads thus:

"**60. Oral evidence must be direct.-** Oral evidence must, in all cases whatever, be direct; that is to say-

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that

manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinion are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection." (emphasis supplied)

. The exception to the rule of direct evidence is- of the factual matrix relating to the circumstances of the transaction which resulted in the death of a married woman could be established through the evidence of a person to whom disclosure was made in that behalf, of such person as to the cause of the person’s death due to subjection to cruelty by her husband or his relatives - which will be reckoned as the circumstances of the transaction which resulted in death of the woman.

Section 32 of the Evidence Act reads thus:

"**32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-**Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) when it relates to cause of death.-When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of the person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever my be the nature of the proceeding in which the cause of his death comes into question.

(2) or is made in course of business.-When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books dept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) or against interest of maker.-When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him

or would have exposed him to a criminal prosecution or to a suit for damages.

(4) or gives opinion as to public right or custom, or matters of general interest.-When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) or relates to existence of relationship.-When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons as to whose relationship [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) or is made in will or deed relating to family affairs.-When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) or in document relating to transaction mentioned in section 13, clause (a).-When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8) or is made by several persons, and expresses feelings relevant to matter in question.-When the statement was made by a number of persons, and expressed feelings

or impressions on their part relevant to the matter in question.

Illustrations

(a) The question is, whether A was murdered by *B*; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by *B*; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of *A's* birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day he attended *A's* mother and delivered her of a son, is a relevant fact.

(c) The question is, whether *A* was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended *A* at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned,

stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to *A* for certain land.

A letter from *A's* deceased agent to *A*, saying that he had received the rent on *A's* account and held it at *A's* orders, is a relevant fact.

(f) The question is, whether *A* and *B* were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is, whether *A*, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way.

A statement by *A*, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market.

A statement of the price, made by a deceased *banya* in the ordinary course of his business is a relevant fact.

(k) The question is, whether *A*, who is dead, was the father of *B*.

A statement by *A* that *B* was his son, is a relevant fact.

(l) The question is, what was the date of the birth of *A*.

A letter from *A's* deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, *A* and *B* were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is relevant fact.

(n) *A* sues *B* for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved." (emphasis supplied)

13. The other relevant provision that can be pressed into service for appreciation of evidence produced by the prosecution is Section 6 of the Evidence Act, which reads thus :

"6. Relevancy of facts forming part of same transaction.-Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations

(a) A is accused of the murder of *B* by beating him. Whatever was said or done by A or *B* or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) *A* is accused of waging war against the [Government of India] by taking part in an armed insurrection in which property is destroyed, troops are attacked, and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though *A* may not have been present at all of them.

(c) *A* sues *B* for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from *B* were delivered to *A*. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact." (emphasis supplied)

. On conjoint reading of the abovesaid provisions, there can be no doubt that the evidence given by PW 2, PW 4 and PW 5 about the disclosures made to them by the deceased (Seema) regarding the circumstances of the transaction which resulted in her death, is admissible evidence for considering the charge of Section 306 of the I.P.C. This legal position is well established. Counsel for the

Appellants relying on the decisions in the cases of **Kappinaiah & Anr. v. Emperor-AIR 1931 Mad.233(2), Pakala Narayana Swami v. Emperor-AIR 1939 PC 47, Mahendra Singh & Anr. v. State of M.P.-1995(3) SCC 731, Gananath Pattnaik v. State of Orissa-2002(2) SCC 619, State of M.P. through CBI & Ors. v. Paltan Mallah & Ors.-2005(3) SCC 169, (paras 11 and 12), and Nirode Ranjan Acharjee v. State of Tripura in Criminal Appeal No.4 of 1979 decided by the High Court of Assam on 14th June 2006,** would contend that the disclosures made by Seema even if spoken by PW 2, PW 4 and PW 5, they should be of such proximity and relate to the immediate transactions which resulted in death of Seema. To my mind, the decisions pressed into service on behalf of the Appellants in no way would assist the Appellants. Having regard to the catena of judicial pronouncements, including the one adverted to by the Trial Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra reported in AIR 1984 SC 1622,** there can hardly be any doubt that if the credentials and veracity of the version of PW 2, PW 4 and PW 5 were to be accepted, their evidence regarding the circumstances of the transaction resulting in the

death of Seema due to hanging, is fully established. The question is: whether the version of PW 2, PW 4 and PW 5 is covered by the expression "of circumstances of the transaction which resulted in death" of Seema? For determining the issue of complicity of the accused in the context of Section 306 of the I.P.C., the factum relating to the cause of death of Seema comes into question. Similar aspect came up for consideration before the Apex Court in the case of **Sharad Sarda (supra)**. The Apex Court after adverting to all the judicial pronouncements referred to in Paragraphs 10 onwards, which also refer to the decisions relied upon by the Appellants referred to earlier, has articulated the legal position that would emerge from all those judicial pronouncements, in Paragraph 21, which reads thus:

> "21. Thus, from a review of the authorities mentioned above and the clear language of S.32(1) of the Evidence Act, the following propositions emerge:-
>
> (1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act,

in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of S.32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a strait-jacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest than all these statements come to the light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under S.32.

(3) The second part of Cl.(1) of S.32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all

> the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.
>
> (5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant."
>
> (emphasis supplied)

14. It was seriously argued on behalf of Appellants that the rule of excepted application of hearsay evidence by virtue of Section 32 will apply only to offence such as Section 302, 304 (Parts I & II). It will not apply to an offence relating to suicide such as Section 306 of I.P.C. This argument is no more res integra. In **Sharad Sarda's case (supra)**, the Apex Court has unambiguously opined that provisions of Section 32 of the Evidence Act can be pressed into service even in relation to offence of suicide. That legal position has been reiterated by the Apex Court in the latter decision.

15. In the subsequent decision, the Apex Court in the case of **Kans Raj v. State of Punjab & Ors. reported in 2000 SCC (Cri.) 935**, has restated the

legal position regarding the purport of Section 32 of the Evidence Act. In Paragraph 6 of this decision, the Apex Court has observed that if there is evidence showing that immediately after the marriage with the deceased, the Respondent-husband started harassing her for the demand of dowry, the statements made before her death by the deceased will be admissible in evidence under Section 32(1) of the Evidence Act even if there does not exist any circumstance which could be shown to prove that the deceased was subjected to cruelty or harassment of her husband or in connection with any demand of dowry soon before her death. In Paragraph 11 of the said decision, the Apex Court observed thus:

> "11. Section 32 of the Evidence Act is admittedly an exception to the general rule of exclusion to the hearsay evidence and the statements of a person, written or verbal, of relevant facts, after his death are admissible in evidence if they refer to the cause of his death or to any circumstances of the transaction which resulted in his death. To attract the provisions of Section 32, for the purposes of admissibility of the statement of a deceased the prosecution is required to prove that the statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured without any amount of delay or expense or he is incapable of giving evidence and that such statement had been made under any of the circumstances specified in

sub-sections (1) to (8) of Section 32 of the Act. Section 32 does not require that the statement sought to be admitted in evidence should have been made in imminent expectation of death. The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. The phrase "circumstances of the transaction" was considered and explained in *Pakala Narayana Swami v. Emperor*:

> "The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused.

> Such a statement might indeed be exculpatory of the person accused. 'Circumstances of the transaction' is a phrase no doubt that conveys some limitation. It is not as broad as the analogous use in 'circumstantial evidence' which includes evidence of all relevant facts. It is on the other hand narrower than 'res gestae'. Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual factual dose. It will be observed that 'the circumstances' are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that 'the cause of (the declarant's) death comes into question'."
>
> (emphasis supplied)

. In Paragraph 12 of the same decision, the Apex Court has reproduced the extract from its earlier reported decision in the case of **Sharad Sarda (supra)**, particularly, Paragraphs 12 to 21 thereof. It will be useful to refer to Paragraphs 13 and 14 of the same decision (**Kansraj's case**) which reads thus:

"13. In *Rattan Singh v. State of H.P.* this Court held that the expression "circumstances of transaction which resulted in his death" mean that there need not necessarily be a direct nexus between the circumstances and death. Even distant circumstance can become admissible if it has nexus with the transaction which resulted in death. Relying upon *Shard Birdhichand Sarda* case the Court held that: (SCC pp. 166-67, para 15)

> "15. It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstances can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death."

"14. In view of this legal position, statements of Ms Sunita made to her parents, brother and other acquaintances, before her death are admissible in evidence under Section 32 of the Evidence Act." (emphasis supplied)

16. Applying the test laid down by the Apex Court as referred to earlier, to the evidence of PW 2, PW 4 and PW 5, there is no reason to doubt the

approach of the Trial Court, who has weighed the said evidence which is admissible evidence to answer the charge of Section 306 r/w Section 34 of the I.P.C. against the Appellants/accused Nos.1, 2 and 3. They have spoken about the circumstances of the transaction which resulted in the death of Seema. According to the Appellants, however, the evidence of the said witnesses is not relating to the "transaction of suicide" committed by Seema and the facts were not so intimately connected with the facts in issue as to form part of the same transaction and were not relevant facts within the meaning of Section 6 of the Evidence Act, which are known as *res gestae*. To buttress this argument, emphasis was placed on the decision in the case of **Kappinaiah (supra)**. It is not possible to countenance this submission. The facts spoken by these witnesses are certainly with regard to the circumstances of the transaction which resulted in the death of Seema and about the state of mind of Seema who ended her life by committing suicide due to exasperation. For that reason, the evidence of these witnesses, albeit, which is based on the disclosures made by Seema to them on relevant matters from time to time would be admissible

within the meaning of Section 32(1) of the Evidence Act, being circumstances of the transaction which resulted in her death-as the cause of Seema's death was put in issue for considering the charge of Section 306 of the I.P.C. The Public Prosecutor has rightly placed reliance on the expositions of the Apex Court in the case of **State of Haryana v. Mange Ram-2003 All.M.R. (Cri.) 368 (SC) (paras 10 and 11);** in the case of **B.Shashikala v. State of A.P.- AIR 2004 SC 1610** (paras 18 and 19) and case of **Thakkar Jha & Ors. v. State of Bihar- 2004 (13) SCC 348** (paras 7 and 8) that it is not necessary that the disclosures to be made by the deceased should be made in expectation of the death, in the context of Section 32 of the Evidence Act.

17. The question is: whether the evidence of prosecution witnesses PW 2, PW 4 and PW 5 can be considered as truthful and trustworthy so as to be the basis to answer the charge against the Appellants/accused Nos.1,2 and 3? The Trial Court, on close examination of the version of these witnesses had no difficulty in accepting their version as truthful and trustworthy. I have no

reason to depart from the said approach. I have already adverted to the evidence given by these witnesses in the earlier part of this Judgment. Although these witnesses have been extensively cross-examined, that does not take the matter any further for the Appellants/accused 1, 2 and 3. The legal presumption under Section 113A of the Evidence Act has remained unrebutted. Besides, the defence has not adduced any evidence of its own for proving facts within the knowledge of the Appellants/accused 1 to 3 as to why Seema was forced to take recourse to such an undignified means of ending her life. Those facts would be within the personal knowledge of the accused along with whom Seema was residing in their house during the relevant period.

18. For the purpose of Section 306 of the I.P.C. to be read with Section 113A of the Evidence Act, all that the prosecution is required to establish is that, the deceased committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty. Significantly, Section 306 of the I.P.C.

merely postulates that any person responsible to abet commission of suicide by another person, the former is liable to be punished for such acts of commission or omission. Furthermore, Section 113A of the Evidence Act, which is attracted in the present case, is a rule of evidence to presume culpability of the Accused who is alleged to have abetted commission of the suicide by a married woman in specified situation. One of that is of subjecting the woman to cruelty. The expression cruelty as defined in Section 498 A is not restricted to causing harassment by unlawful demand for any property or valuable security or on account of failure of the woman or her relatives to meet such demand, but also includes the wilful conduct of such nature as is likely to drive the woman to commit suicide. Pertinently, the unlawful demand ascribable to Section 306 read with Section 113 A, can be dehors the demand of dowry being consideration for the marriage as is required to attract the provisions of the Dowry Prohibition Act, 1961. In other words, the expression "unlawful demand" cannot be limited to the "demand of dowry" as such. (See *Satvir Singh v. State of Punjab - 2001 (8) SCC 1633* (paras 15, 16 and 17).

Ordinarily, the cruelty envisaged in clause (a) of Explanation to Section 498 A of the I.P.C. can be on account of such wilful conduct which may be unrelated to any unlawful demand, yet constitute cruelty. But in a given case, it may be possible to infer that on account of repeated unlawful demands of the husband and his relatives, the wife would feel exasperated on witnessing the hapless condition of her parents and may end up in committing suicide. That may attract clause (a) of Explanation to Section 498 A as also clause (b) thereof to constitute cruelty on account of such repeated unlawful demands-which inevitably is the product of wilful and persistent conduct of the husband and his relatives. In this case, the allegations are one of causing harassment to Seema on account of such repeated unlawful demands and also of persistent and wilful conduct of the Accused of such a nature which drove her to commit suicide.

19. As has been observed earlier, the fact that Seema committed suicide, that has not been challenged by the Appellants before this Court. Similarly, the fact that Seema committed suicide

within seven years from the date of her marriage is also not in dispute. The only controversy, therefore, that needs to be addressed to ascertain the culpability of the Appellants in relation to offence under Section 306 r/w Section 34 of the I.P.C. is to find out whether there is legal evidence to establish the fact that the accused No.3-husband, accused No.1-mother-in-law and accused No.2-sister-in-law had subjected Seema to cruelty, which would be the circumstances of the transaction resulting in her death. The disclosures made by Seema to each of the prosecution witnesses PW 2, PW 4 and PW 5 have been spelt out by them in their respective evidence. They have also spoken about the other evidence from their personal knowledge. The evidence of these prosecution witnesses is truthful, reliable and has remained unshaken. That evidence would substantiate the fact that such disclosures were made by Seema to them from time to time as stated in their evidence. The evidence is admissible to the extent that such disclosures have been made by Seema to the respective witnesses and also on the factum of state of mind of Seema at the relevant time. The Trial Court has rightly weighed the

evidence to hold that there was clear evidence to establish the culpability of the Appellants herein of having subjected Seema to cruelty. I am in agreement with that view. Once this position is established from the evidence, it is only matter of drawing statutory inference under Section 113A of the Evidence Act that those were the circumstances of the transaction which impelled Seema to end her life by committing suicide. The learned Counsel for the Appellants would rely on the exposition of the Apex Court in the case of **Sanju alias Sanjay Singh Sengar v. State of M.P. - 2002 (5) SCC 371** to contend that merely on the allegation of harassment of the deceased, conviction of the Appellants for offence under Section 306 of I.P.C. read with Section 107 of I.P.C. was not sustainable. The view taken in the said decision is obviously on the facts of that case. In Para 12 of the decision, the Apex Court held that even if the prosecution story that the Appellant had asked the deceased "to go and die", that itself does not constitute the ingredient of instigation. To attract charge of instigation, presence of mens rea is the necessary concomitant thereof. Suffice it to observe that on the facts of that case, the

Court went on to hold that the ingredients of abetment were totally absent to attract offence under Section 306 of I.P.C. Reliance is also placed on the dictum in **A.K.Chaudhary & Anr. v. State of Gujarat & Ors. - 2006 Cri.L.J. 726** (paras 12 to 17) regarding the scope and ambit of Section 306 I.P.C. for abetment of suicide. Even this decision is of no avail to the Appellants against whom evidence of their complicity in subjecting Seema to cruelty is established, coupled with the fact that the death of Seema occurred by suicide within two years of her marriage, thus raising legal presumption under Section 113 A of the Evidence Act, which has remained unrebutted. Reliance is then placed on the decision of our High Court in **Rakesh Saigal v. State of Maharashtra MANU/MH/0836/1992**. The view taken therein is on the fact situation of that case. The Court has found that even if the allegation was accepted to be true, the demand for the disposal of the flat was not unlawful but for legitimate purpose and that the step taken by the deceased in that case was not a normal woman's reaction. This decision is of no avail to the Appellants.

20. Prosecution witnesses have spoken about the complicity of each of the Appellants/accused Nos.1 to 3 at different stages individually or together. Understood thus, I have no hesitation in upholding the finding of guilt recorded by the Trial Court against the Appellants/accused 1 to 3 in relation to offence punishable under Section 306 r/w Section 34 of the I.P.C.

21. As mentioned earlier, the evidence of PW 2, PW 4 and PW 5 is broadly founded on the disclosures made to them by Seema. The facts disclosed to them by Seema, speak about the state of mind of Seema at the relevant point of time. That evidence will be useful only to consider the charge of offence under Section 306 of the I.P.C. against the accused. However, the evidence regarding the disclosures made by Seema and spoken by the witnesses PW 2, PW 4 and PW 5 will be inadmissible to proceed against the Appellants for offence punishable under Section 498A r/w Section 34 of the I.P.C., as the said evidence will not be covered by the excepted category specified by Section 32 of the Evidence Act. [See **Gananath Pattnaik (supra) (Para 10)].**

22. The question is: whether there is legal evidence to proceed against the Appellants/accused 1 to 3 for offence under Section 498A r/w Section 34 of the I.P.C. Section 498A reads thus:

> **"498A. Husband or relative of husband of a woman subjecting her to cruelty.-**Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> *Explanation.*-For the purpose of this section, "cruelty" means-
>
> (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to like, limb or health (whether mental or physical) of the woman; or
>
> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

23. Insofar as offence under Section 498A of the I.P.C. is concerned, in the first place, it is not a major offence like Section 306 of the I.P.C. which is punishable with imprisonment for a term

which may extend to ten years and shall also be liable to fine. Whereas, offence under Section 498A of the I.P.C. is punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. In other words, even if the Appellants were to succeed in relation to the charge of Section 498-A r/w 34 of the I.P.C. that will be of no avail, in view of the finding of guilt upheld against them for offence under Section 306 r/w Section 34 of the I.P.C. hitherto. Be that as it may, the direct evidence of PW 2, PW 4 and PW 5 in relation to certain events, if accepted, would bring home the guilt of Appellants for the offence under Section 498A of the I.P.C.

24. The question regarding purport of Section 498A is no more *res integra*. It is an offence to punish the husband or the relatives of the husband of a woman who has been subjected to cruelty. The meaning of word "cruelty" will have to be culled out from the Explanation given under the said Section. Clause (a) postulates one form of cruelty which is a wilful conduct of the husband or the relatives of the husband which is of such a nature as is likely to drive the woman to commit suicide.

[See *K.Prema S.Rao v. Yadla Srinivasa Rao (supra)* (para 18)]. The other is Clause (b) of the Explanation. Clause (b) of the Explanation is in two parts. It relates to the harassment of the woman by the husband or his relatives, which is with a view to coercing the woman or any person related to her to meet any unlawful demand for any property or valuable security. The other part of clause (b) refers to the harassment caused by the husband or his relatives to the woman due to the failure of the woman or her relatives to meet with their unlawful demand. It is not the case of PW 2, PW 4 and PW 5 that Seema was harassed by the Appellants on account of failure to meet the unlawful demand. The question is: whether the evidence of PW 2, PW 4 and PW 5 makes out a case of cruelty covered by clause (a) of the Explanation or the first part of cruelty specified by clause (b) of the Explanation or both. Indeed, the two situations in Clauses (a) and (b) are distinct and may be different in forms. In a given case, the situation referred to in Clause (b) may result in constituting cruelty in terms of Clause (a) as well. Be that as it may, insofar as cruelty postulated by clause (a) of the Explanation is

concerned, that relates to a wilful or intentional conduct of the Accused which is of such a nature as is likely to drive the woman to commit suicide. In other words, the conduct of the Accused is such that it causes immense torture to the woman to drive her to commit suicide. The torture can be inflicted in physical or mental form. [See *Gananath Pattnaik (supra)* (Para 7)]. For example, ridiculing and insulting the woman repeatedly on one pretext or the other by "wilful conduct" of husband and his relatives, the woman may feel humiliated and if she is required to suffer such humiliation time and again, may drive her to commit suicide out of frustration. Indeed, the expression "wilful conduct" requires much beyond normal matrimonial disputes between the husband and wife.

25. The prosecution witnesses have spoken about the incident immediately after marriage when the accused No.1 and accused No.2 had sarcastically commented to ensure that sufficient quantity of *durdi* be sent along with Seema when she returns back to her matrimonial house. No doubt, PW 2 has accepted that giving *durdi* while sending back daughter to her matrimonial house on her first

visit is customary. Customary gift though permissible and cannot be designated as unlawful demand as such, however, the sentiments behind the caustic remark or the sarcasm was to ridicule Seema and brother of Seema (PW 4) who had come to collect Seema to be taken to her parental house for the first time after marriage. This version of PW 2 corroborates the fact so narrated by PW 4-brother of Seema. The evidence of prosecution witnesses would also indicate that Seema conveyed during her visit on the first Diwali, about the threat given by accused No.1 and accused No.2 to gift gold ring to accused No.3-husband, failing which, she should not return to her matrimonial house. No doubt, PW 2 accepts that it is customary to gift such gold ring to son-in-law during first Diwali after marriage. However, the imprint left on the mind of Seema as also the relatives of Seema is of threat given to Seema to ensure that gold ring is given to accused No.3-husband, which was a disturbing feature. I am conscious of the fact that disclosure made by Seema about giving of threat by Accused Nos.1 and 2, spoken by PW 2 would be hearsay evidence. However, PW 2 has then deposed that he complied with that demand by giving gold

ring to accused No.3 personally. Be that as it may, PW 2, 4 and 5, have then spoken about the fact

from their personal knowledge that when they had brought Seema in the seventh month of her pregnancy, the accused persons asked to immediately send back Seema to her matrimonial house. To avoid any confrontation, obviously, Seema was sent back to her matrimonial house within fifteen days of her arrival during the seventh month of her pregnancy. This conduct of accused has also contributed to leaving an imprint about harassment on the mind of Seema as well as her parental family members. Prosecution witnesses have again spoken about the fact from their personal knowledge, that when PW 2 went with customary gifts like clothes for accused Nos.1 to 4 and sufficient sweets at the time of *Dohale Meals* and even though the gifts purchased by him were of good quality, in the presence of relatives and neighbours, accused No.3-husband sarcastically observed that the clothes purchased for his parents were not of good quality so as to belittle the parents and family of Seema. Such remarks were bound to cause mental distress not only to PW 4 being brother, but moreso, the wife Seema, who cannot disassociate herself from her relation and more importantly, the dignity of her

father. PW 2 and 4 have also spoken about the fact from their personal knowledge, about the incident of accused Nos.1 and 2 blaming Seema for having given birth to a female child. Any disparaging observation made of such kind is bound to shatter the woman who had just given birth to a child and was still in hospital. To get over this position, it was argued that the witnesses, in particular, PW 2 and PW 5 in the cross-examination have admitted that family members of Appellants had stayed at their house when they had come for the naming ceremony. It was seriously argued that the fact that the Appellants or the family members of the Appellants stayed at the house of PW 2, would indicate that everything was normal. Indeed, the witnesses have admitted that the Appellants and the relatives had stayed in the house of PW 2 during the relevant time. However, that does not mean that the event which had unfolded in the hospital when accused Nos.1 and 2 had visited Seema in the hospital, did not happen at all. If the defence was asserting the fact that relations between the two families were absolutely normal, so as to counter the allegation of unlawful demand or wilful conduct resulting in cruelty inflicted on Seema,

the defence ought to have established those facts which were within their knowledge. PW 2, 4 and 5 have also spoken about the demand made by accused No.3-husband. Firstly, of Rs.10,000/- (Rupees Ten Thousand) on the pretext that it was required for agricultural activity by accused No.3 and the second demand in the sum of Rs.40,000/- (Rupees Forty Thousand) to enable the accused No.3 to pay off his loans. Insofar as the first demand is concerned, that disclosure was made by Seema to PW 2 himself. PW 2 has then stated that he personally handed over the amount of Rs.10,000/- to accused No.3 as demanded. This version has not been shaken at all. No doubt, on acceptance of this evidence, the case would fall in first part of Clause (b) of the Explanation, which is harassment of the woman with a view to coercing her and her relatives to meet the unlawful demand. Counsel for the Appellants would submit that assuming that such demand was made by accused No.3, it cannot be said as an unlawful demand. According to him, expression "unlawful demand" has not been defined in the I.P.C., though the term "illegal", "legally bound to do" is defined under Section 43 of the I.P.C. For that reason, the natural meaning to

expression "unlawful demand" will have to be given. Counsel for the Appellants would submit that the demand would become unlawful only if it were to be covered by the provisions of the Dowry Prohibition Act, 1961. According to him, the subject demands made in this case were not in relation to the marriage and for which reason, will not be covered by the provisions of Act of 1961. To buttress this argument, reliance is placed on the decision of the Apex Court in the case of **S.Gopal Reddy v. State of A.P. - 1996 (4) SCC 596**. That was a case directly under the provisions of the Act of 1961. It is submitted that the expression "unlawful" will have to be understood in terms of the dictionary meaning given in dictionaries such as Black's Law Dictionary, which reads thus:

> **"Unlawful.** That which is contrary to, prohibited, or unauthorized by law. That which is not lawful. The acting contrary to, or in defiance of the law; disobeying or disregarding the law."

. Reliance is also placed on other dictionaries for the meaning of word "unlawful", "unlawfully", "legal", "legally" and "illegal"; such as Stroud's Judicial Dictionary, Words and

Phrases legally defined- Third Edition, Legal Thesaurus by William C.Burton, and The Law Lexicon by P.Ramanatha Aiyar.

26. Even though the Appellants may be justified in contending that as the demand for Rs.10,000/- (Rupees Ten Thousand) was for seeking assistance in agricultural activity and for Rs.40,000/- (Rupees Forty Thousand) was for enabling the accused No.3 to pay off his loans, that cannot *per se* be said to be illegal or unlawful demand as such. Nevertheless, it would become unlawful demand for property or valuable security if the evidence indicates that the Appellants "insisted upon" the deceased or "coerced" or "compelled" her or any of her relatives to meet such demand. In other words, if the evidence shows that the payment made was not voluntary or not out of love and affection, that would attract the term unlawful demand. Significantly, the Counsel for the Appellants has mixed up the ingredient required to be borne in mind in respect of Section 304B of the I.P.C., which specifically requires the cruelty or harassment by the husband or any relative of the

husband in connection with any "demand of dowry", which in turn, necessarily has to be in connection with the marriage of the parties. [See *Satvir Singh (supra)* (para 21)]. That is not the requirement under Section 498A of the I.P.C., in particular, Clause (b) of the Explanation. It merely refers to an unlawful demand. It cannot be overlooked that both the provisions i.e. Section 304B and 498A were introduced almost at the same time. Inasmuch as, Section 498A was introduced by Act 46 of 1983 with effect from 25th December 1983, whereas, Section 304B providing for punishment for dowry death was introduced by Act 43 of 1986 with effect from 19th November 1986. Suffice it to observe that unlawful demand referred to in Section 498A in clause (b) of Explanation, is a wider term, not necessarily confined to a dowry demand. The essential requirement for Section 498A is not the nature of demand as such, but it is the wilful conduct of the husband or his relatives that was to cause harassment of the woman which harassment is with a view to coerce the woman or her relatives to meet such demand for property or valuable security. In other words, it is the harassment caused to the woman by such demand, which will constitute

cruelty. In a given case, if the demand made by the husband for any property or valuable security may not be illegal, yet that will form the basis for inflicting cruelty if it were to be shown that the woman and her relatives were coerced to meet that demand. It will be an unlawful demand, as the woman nor her relatives were legally liable to pay such amount for the stated cause. The fact that the woman or her relative has succumbed to such demand under pressure will not make it a lawful payment. The coercive demand will be nothing short of extortion. What is to be seen is not the purported or ostensible cause for which the demand is made, is lawful or unlawful, but to notice the intention behind that demand. If it is bereft of any force or coercion then surely it would be legitimate way of asking for help. However, if the husband and his relatives in the guise of help, keep on making demands one after the other with no intention to repay the same, such conduct would fit in the expression of "unlawful demand". Moreso, when the maker of demand is fully aware that the relatives of the wife will have to perhaps beg or borrow the demanded amount to meet the same. In other words, the rigours of Section 498 A of the

I.P.C. will be attracted not when the demand is only a request and not a coercive one, but when it is palpably a demand with intention to forcing the woman and her relatives to succumb to the same against their will. Rather leaving no option to them but to meet that demand under compulsion.

27. Insofar as the case on hand is concerned, there is therefore, not only evidence of PW 2, PW 4 and PW 5 on matters which will fall under clause (a) of the Explanation to Section 498A of the I.P.C. which defines the term cruelty, but also under first part of clause (b) of Explanation thereto. The evidence on those matters is substantiated by these witnesses. There can be no doubt that the factum of harassment caused to the woman cannot be considered on the basis of individual incidents spoken by the witnesses in isolation. The Court will have to consider the totality of the impact of every such event relevant to constitute harassment of the woman. Just as in the case of slow poisoning, the overall impact of all the doses administered would become relevant, in the case such as the present one, wherein, death is a culmination of a continuous drama long in

process, each event was bound to leave shattering and compounding impact on the mind of the wife and the demand of Rs.40,000/- (Rupees Forty Thousand) must have become unbearable for her, driving her to commit suicide. As is mentioned earlier, the cross-examination is not to suggest falsity but to persuade the Court to discard the version as it was not disclosed in the complaint (Exhibit 21). The Additional Public Prosecutor has rightly pressed into service decisions reported in **2003 SCC (Cri.) 165 - Alamgir v. State (NCT, Delhi) (Para 12), 1990 Cri.L.J.111-Ram Achal v. State of U.P. (Para 19), 1997 Cri.L.J. 499-Shunmugasundaram v. State by Deputy Superintendent of Police, Erode Town (Para 17), (2004) 5 SCC 679-Anil Sharma & Ors. v. State of Jharkhand (Para 13), (1997) 4 SCC 161-Rattan Singh v. State of H.P. (Paras 9 and 11 to 16)**. I am in agreement with the argument of the Additional Public Prosecutor that non-mention of a fact in the Complaint (Exhibit 21) cannot be the basis to shut out the evidence on relevant facts. It cannot be painted as omission or improvement as such. Suffice it to observe that there is enough evidence to uphold the opinion recorded by the Trial Court against the Appellants/Accused 1 to 3

even in relation to offence under Section 498A r/w Section 34 of the I.P.C.

28. Counsel for the Appellants had argued that there was unexplained delay in lodging the complaint which was fatal to the prosecution case. In my opinion, having regard to the fact situation of the present case, I am in agreement with the view taken by the Trial Court on this aspect on analysis of evidence of PW 2. The view taken by the Trial Court that there was no delay, much less, unexplained delay as contended by the defence was untenable as the witness has given the details as to his movements immediately after getting information about the death of Seema till the complaint came to be lodged after the last rites were completed. Suffice it to observe that the Trial Court having accepted the explanation given by the prosecution, there is no reason to depart from that view, as the same is a possible view. [See *Shaikh Rashid Shaikh Khudabux v. State of Maharashtra - 2002 All M.R. (Cri.) 2392* (paras 7 and 8)].

29. It was then contended that even though the complaint was lodged on the next day of the incident, which was obviously after consultation and under legal advise. The same makes no reference to any illegal/unlawful demand or harassment and that, those aspects have been spoken for the first time only before the Court. This argument is only another shade of submission which has already been rejected earlier. Inasmuch as, the fact that certain matters were or have not been stated in the complaint or in the first statement of the witness, does not mean that the same will have to be shut out from the evidence. It is not possible to countenance the argument that such evidence is an afterthought. The evidence which has already come on record, cannot be lightly brushed aside on this argument or on the ground that the oral evidence is not supported by any contemporaneous record. It all depends on facts of each case. The prosecution is not expected to create record. Merely because no letters of Seema or such other contemporaneous record has been produced by the prosecution, that cannot be the basis to discard the entire oral evidence

straightaway, unless the same was found to be untrustworthy. On fair analysis of the evidence of PW 2, PW 4 and PW 5, I am in agreement with the opinion recorded by the Trial Court that their version is truthful and reliable. In fact, the events spoken by them have remained unshaken in the cross-examination.

30. The next argument of the Appellants is that although the Investigating Officer (PW 7) during investigation had recorded statements of other persons, those persons have not been examined as witnesses. It is well established position that it is the quality of evidence that is important. Moreover, if the witnesses were to repeat the same facts, it is open to the prosecution to limit the number of witnesses to avoid repetitive evidence. Relying on the version given by the Investigating Officer (PW 7) in Para 7 of the cross-examination that he had recorded statement of Ranjana who has spoken that she used to convince Seema not to feel depressed because of teasing by some ladies at the public water tab because of her physical disability and be content with the fact that her own family members were not blaming her for that. Emphasis

was placed on this version to contend that it is not the Appellants who had ridiculed Seema for her physical disability and that allegation was an afterthought. This argument overlooks that, the fact that Seema was being teased or ridiculed for her physical disability in the first place is accepted. The cross-examination would only suggest that some ladies from the village were indulging in such teasing and not the family members of Appellants. Once again, this fact was within the personal knowledge of the Appellants and by virtue of Section 106 of the Evidence Act, the burden of proving such fact was on such person.

31. It was argued on behalf of Appellants that the charge framed by the Trial Court was misleading. Relying on the decision of the Apex Court in **1997 (5) SCC 348 in the case of Sangaraboina Sreenu v. State of A.P.,** it is argued that the Trial Court was oblivious of the legal position that offence under Section 302 and under Section 306 of the I.P.C. were mutually exclusive. This argument does not take the matter any further for the Appellants. The Appellants, on analysis of the evidence on record have been eventually found

guilty of offence only under Section 306 r/w Section 34 and acquitted of the charge of Section 302 r/w Section 34 of the I.P.C. Similar argument has been considered and rejected by the Apex Court in the case of **K.Prema S.Rao (supra)** (paras 22 to 26). Besides, this argument overlooks the established legal position flowing from Section 464 of the Criminal Procedure Code, 1973. The Appellants can complain of trial having vitiated only by establishing the fact that the failure of justice has in fact been occasioned on account of such faulty charge. In the case on hand, there is no such evidence nor am I inclined to take the view that any miscarriage of justice in fact has occasioned to the Appellants.

32. The only other question that requires to be addressed is regarding quantum of sentence. For the offence under Section 306 r/w Section 34 of the I.P.C., the Appellants have been sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.500/- (Rupees Five Hundred), in default, to suffer rigorous imprisonment for one month. Insofar as offence under Section 498A r/w Section 34 of the I.P.C. is concerned, the

Appellants have been sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- (Rupees Five Hundred), in default, to suffer further rigorous imprisonment for one month. The Trial Court has however ordered that the substantive sentences shall run concurrently. The offence under Section 306 of the I.P.C. is punishable with imprisonment which may extend to ten years and shall also be liable to fine. The Trial Court has advisedly imposed commensurate punishment against the Appellants for the said offence. That term of punishment cannot be said to be excessive or unreasonable. Indeed, I am conscious of the fact that Appellants 1 and 2 are women. Appellant No.1 is presently aged about 59 years whereas, Appellant No.2 is about 36 years of age. Even so, I find no reason to depart from the view taken by the lower Court on the point of punishment in the fact situation of the present case.

33. If the sentence already awarded in relation to offence under Section 306 r/w Section 34 of the I.P.C. was to be upheld, which I am inclined to do, the question of excessive quantum

of sentence for offence under Section 498A r/w Section 34 of the I.P.C. will only become academic as the punishment awarded for that offence is only rigorous imprisonment for one year which sentence will run concurrently with the substantive sentence of offence under Section 306 r/w Section 34 of the I.P.C.

34. In view of the above, there is no merit in this Appeal. Accordingly, this Appeal should fail and the same is dismissed.

35. Bail-bonds of the Appellants 1 and 2 to stand cancelled and the said Appellants who are on bail, will have to surrender to undergo the sentence awarded by the Trial Court with regard to the respective offences within twelve weeks from today, failing which, it will be open to proceed against the said Appellants in accordance with law.

A.M.KHANWILKAR, J.